IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.27470 OF 2007

1.R.Kumar
2.K.Kanchana Devi ... Petitioners

-vs-

G.Rajagopal ... Respondent

Petition under Section 482 of the Code of Criminal Procedure

For petitioners : Dr.G.Krishnamurthy

For respondent : Mr.P.V.Sanjeevi

O R D E R

This petition has been filed, praying to call for the records in C.C.No.11910 of 2007 on the file of III Metropolitan Magistrate, George Town, Chennai, and to quash the same.

2. Petitioners are the accused in the Calendar Case, which is taken on file, on a private complaint lodged by the respondent/complainant, alleging that the petitioners are liable for prosecution under Sections 384,406,420,422,423,424,448,477A and 506 IPC.

3. The case of the respondent is that he applied for a housing loan with HDFC Bank and was offered a sum of Rs.9.00 lakhs, which was limited to Rs.8.50 lakhs, and the said amount was received by him in instalments, by mortgaging his property, sprawling to an extent of 1965 sq.ft., comprised in Survey No.758/2, Madambakkam Village, Tambaram Taluk, Kancheepuram District. It is his further case that the first petitioner approached him, representing that he was a builder, engaged in the construction of houses/buildings to various persons; on that score, at the first instance, the respondent paid a sum of Rs.3.00 lakhs to the first petitioner, for which the latter agreed to construct a house, but he delayed to construct the house for the respondent; subsequently, the first petitioner fraudulently persuaded the respondent to agree for discharging of loan by him on behalf of the respondent in instalments; so saying, the first petitioner obtained General Power of Attorney on 11.06.2005 from the respondent, with an authorisation to move the HDFC Bank, for further course of business; on the strength of the said Power of Attorney deed,

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the first petitioner executed a sale deed in favour of his wife, namely, second petitioner, with respect to the house which he constructed in the respondent's land; the first petitioner also obtained an undated cheque for a sum of Rs.3.00 lakhs from the respondent and, added to the above, from the very inception of the nexus with the first petitioner, the respondent was totally deceived and cheated, with a mala fide and criminal intention, to cause huge loss and that the first petitioner fraudulently obtained all the documents, which were entrusted to HDFC Bank, towards loan.

4. The core of contention of the learned counsel for the petitioners is that the III Metropolitan Magistrate, George Town, Chennai, has no territorial jurisdiction over the matter and the allegations in the complaint have been made on mere surmises and conjectures and that on an apprehension of a complaint under Section 138 of The Negotiable Instruments Act, the respondent has hastened to file a false private complaint, which is non est in the eye of law.

5. Per contra, learned counsel for the respondent would submit that as far as the contention with regard to criminal liability of the petitioners/accused is concerned, the Court has to see, whether the complaint prima facie makes out any cognizable offence against the petitioners and while the said exercise is undertaken, the Court is not expected to go deep into the matter and discuss the genuineness of the allegations found therein and that even at the time of framing of charges, the Court is not expected to probe the case with reference to the merits of the case and also as to whether the offence could be proved by the prosecution.

6. In support of the said submission, learned counsel for the respondent garnered support from a Full Bench decision of the Supreme Court in State of Maharashtra and others v. Som Nath Thapa and others, 1996 Supreme Court Cases (Cri) 820, wherein it was observed as under :

> "So if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

7. Following the dictum laid down in the above said decision, it must be held that the Court, while taking cognizance of an offence or at the time of framing charges, need not take pains to foresee the consequences of the matter, but the materials of prosecution to show the prima facie case alone.

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8. As far as the averments contained in the present complaint are concerned, they prima facie show the making out of a cognizable offence against the petitioners. Hence, on that score, the question of quashing the complaint does not arise.

9. The next limb of contention of the learned counsel for the petitioners is, with reference to the territorial jurisdiction of the III Metropolitan Magistrate Court, Chennai. In this context, the learned counsel would submit that no cause of action has arisen within the territorial jurisdiction of the said Court and the said Court has overstepped its powers to accept a complaint, which could not at all be maintained before it and taking cognizance of the matter on the basis of a basically illegal complaint would be a classical instance of injustice.

10. Repelling the said contention, learned counsel for the respondent would submit that even assuming that the matter in question does not fall within the territorial jurisdiction, the Magistrate has got power to take congnizance of the same.

11. I find substance in the said submission of the learned counsel for the respondent, in view of a decision of the Supreme Court. The principle with regard to this legal proposition is contained in Trisuns Chemical Industry v. Rajesh Agarwal and others, 1999 CRI.L.J.4325, in the following terms :

> "It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. S.193 imposes a restriction on the Court of Session to take cognizance of any offence as a Court of original jurisdiction. But, "any" Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not. The only restriction contained in S.190 is that the power to take cognizance is "subject to the provisions of this Chapter". There are 9 Sections in Chap.XIV most of which contain one or other restriction imposed on the power of a First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class, his power to take cognizance is not impaired by territorial restrictions. After taking cognizance, he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation

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would reach only during the post cognizance stage and not earlier."

12. Guided by the ratio laid down in the decision aforementioned, it must be observed that even if the III Metropolitan Magistrate, Chennai, could not exercise territorial jurisdiction over the matter, the law does not prevent him from taking cognizance of the matter. If he finds that he does not have territorial jurisdiction, he may act thereon, in accordance with law, on a subsequent occasion. To put it in other words, after taking cognizance of the matter also, during the subsequent proceedings of the case, he may decide the issue with regard to territorial jurisdiction and, on that ground, there would be no quashment of the complaint.

13. In the light of the well settled legal principles, there could be no quashment of the proceedings in C.C.No.11910 of 2007 on the file of III Metropolitan Magistrate, George Town, Chennai. The petitioners may project their legal contentions before the trial Court and get the remedy.

14. Criminal Original Petition is dismissed. Consequently, the connected Criminal M.P.Nos.1 and 2 of 2007 are also dismissed.

sd/-
Asst.Registrar

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Sub Asst.Registrar

dixit

To

1. The III Metropolitan Magistrate,
   George Town, Chennai

2. -Do-Thro The Chief Metropolitan Magistrate,
   Egmore, Chennai.

+1 cc to MR. P.V. Sanjeev, Advocate, SR.69564.

KLT(CO)
RP 5/12/2007.

CRL.O.P.No.27470 OF 2007

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